In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 474

HYMAN ABRAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of New York, petitioner, an attorney who specialized in immigration law, was convicted on two counts of aiding and abetting the submission of false statements to the Immigration and Naturalization Service (18 U.S.C. 1001), on one count of obstructing the administrative process (18 U.S.C. 1505), and on two counts of causing aliens not to be in possession of alien registration certificates (8 U.S.C. 1304(e)). He was sentenced to concurrent terms of imprisonment not exceeding one year. The court of appeals affirmed (Pet. App. A 1–10).

Petitioner contends here that the exercise of his Fifth Amendment privilege against self-incrimination

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(invoked to avoid producing certain files requested by the government), was improperly brought to the attention of the jury (Pet. 5–7). In this connection, he asserts that the trial judge erred in ruling that counsel for petitioner had to make an objection before the jury to the production of the questioned files. Also, petitioner raises the separate argument here that the conviction on the "obstruction of justice" count was deficient because of an alleged lack of proof that petitioner intended to influence the conduct of witness Downer at the administrative hearing (Pet. 7–9)[1]. Both arguments were made before the court of appeals and were answered in the opinion of that court on which we rely here.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1970.

[1] Petitioner knew, however, that Mrs. Downer was being questioned by I.N.S. officials in connection with her application for voluntary departure and, according to her testimony, endeavored to influence her to lie with respect to a material fact (Trial Transcript, pp. 553–559). Plainly, the consideration of that application was a "proceeding" within the meaning of the statute.

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